# In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 312

THE MATERIAL HANDLING INSTITUTE, INC., PETITIONER

*v.*

RICHARD W. MCLAREN, ASSISTANT ATTORNEY GENERAL OF THE UNITED STATES

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

## MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The statement of this case is adequately set forth in the opinion of the court of appeals, Pet. 15–16.

The only issue properly raised by the petition is whether the court of appeals correctly decided that a list of some 500 firms which petitioner, The Material Handling Institute ("Institute"), asserted are eligible for membership in the Institute, but which are nevertheless not members, is relevant to a pending investigation by the Department of Justice to determine whether the Institute's restrictive membership provisions may violate Section 1 of the Sherman Act (15 U.S.C. 1). Under the Antitrust Civil Process Act,



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15 U.S.C. 1311 *et seq.*, the Attorney General is authorized to issue a civil investigative demand to any person under investigation for the production "of any documentary material relevant to a civil antitrust investigation" (15 U.S.C. 1312(a)). The court of appeals, in a unanimous decision (Pet. App. 13–19), held that the list of eligible non-member firms is relevant to the civil antitrust investigation of petitioner's membership policies, on the ground that "the reasons eligible non-members have not joined the Institute are relevant to any analysis of the competitive impact of the Institute and thus to the anticompetitive effect of its membership policy" (Pet. App. 18). It therefore affirmed the district court's judgment denying the Institute's petition to set aside the civil investigative demand. Pet. 20.

The decision is correct. Nothing therein extends the statutory limits upon the Attorney General's authority to investigate. The petition for certiorari raises no issue warranting further review and it should accordingly be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
*Solicitor General.*

JULY 1970.

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